

**FILED**

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**CAROL E. HIGBEE, J.S.C.**

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IN RE: HRT LITIGATION	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	ATLANTIC COUNTY
	:	
	:	CASE NO. 266
	:	
	:	CIVIL ACTION
	:	HRT LITIGATION

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**CONFIDENTIALITY ORDER**

**WHEREAS**, certain documents and information have been and may be sought, produced or exhibited by and among the parties to the above-styled proceeding ( "HRT Litigation") which relate to the parties' confidential and proprietary information that may be subject to protection under R: 4-10-3; and

**WHEREAS**, the parties have provided, and will provide a significant amount of discovery materials ("Discovery Materials") in the HRT Litigation and the parties agree that a protective order will facilitate a timely and efficient discovery process;

**IT IS HEREBY, ORDERED THAT:**

**I. DEFINITIONS**

A. "Confidential Information" as used herein, is defined as any information that the Producing Party believes in good faith constitutes, reflects, discloses, or contains information subject to protection under R: 4:10-3, whether it is a document, information contained in a document, information revealed during a deposition or other testimony. In designating

Discovery Materials as Confidential Information, the Producing Party shall do so consistent with the rulings of the Court.

B. Because document production has already begun in the Philadelphia and MDL Hormone Therapy litigation, the parties agree that Defendants may keep the same confidential designations already used for any document previously produced in the MDL or Philadelphia, subject to the procedures set forth in paragraphs III F and IV. Defendants will apply this Confidentiality Order and its terms to any documents not previously produced or marked confidential. Both sides reserve their right to challenge the scope of this Order.

C. Specific documents and discovery responses produced by a Producing Party shall, if appropriate, be designated as Confidential Information by marking the pages of the document that contain Confidential Information as follows: "CONFIDENTIAL - SUBJECT TO CONFIDENTIALITY ORDER" or an equivalent stamp indicating it is deemed confidential by the Producing Party (hereinafter "Stamped Confidential Documents"). Documents that do not bear the foregoing designation are not Confidential Information as that term is used in this Order. The Confidentiality marking shall be affixed in a manner so as not to obscure or obliterate any written matter.

D. This Order applies to all documents, and other products of discovery, the information contained therein, and all other information produced or disclosed during this Litigation whether revealed in a document, deposition, other testimony, discovery response or otherwise, by any party in this Litigation by a party (the "Producing Party") to any other party or parties (the "Receiving Party").

## **II. PROPER USE OF STAMPED CONFIDENTIAL DOCUMENTS**

A. The Confidential Information described herein will be used only for HRT Litigation, including any appeals of this Litigation, and for any other HRT Litigation pending in any state or federal court, subject to paragraph III C (8).

B. Nothing herein shall be construed to affect in any manner the admissibility at trial or any other court proceeding of any document, testimony, or other evidence.

## **III. DISCLOSURE OF STAMPED CONFIDENTIAL DOCUMENTS**

A. Except as provided in this Order, Stamped Confidential Documents may not be disclosed to any person.

B. Nothing contained in this Confidentiality Order shall preclude any party or counsel for the Producing Party from using that party's own Confidential Information in any manner it sees fit, without prior consent of any party or the Court.

C. The Receiving Party may disclose Confidential Information to the following people:

(1) Plaintiffs in the New Jersey HRT Litigation;

(2) Counsel of record for the parties in the New Jersey HRT Litigation, including co-counsel for the Receiving Party and the attorneys, paralegals, stenographic, and clerical staff employed by or contracted by such counsel, to the extent reasonably necessary to render professional services in this litigation;

(3) Witnesses at depositions. All such witnesses shall be bound by the provisions of this Confidentiality Order;

(4) Court reporters (including persons operating video recording equipment at a deposition), stenographic employees and court reporters recording or transcribing testimony in

this Litigation;

(5) The Court, and any appellate court, including court personnel, any Special Master appointed by the Court, and any members of their staffs to whom it is necessary to disclose the information;

(6) Consultants, experts or advisors, whether formally retained or not, retained for the purpose of assisting counsel in this litigation, (including people employed by those experts, consultants and advisors), provided that each such person signs the certification attached as Exhibit A;

(7) Co-defendant parties other than the Producing Party, but only subject to paragraph XII below;

(8) Plaintiffs or any attorney for claimants in other pending litigation involving HRT (or attorneys for claimants in any other pending litigation as the parties may mutually agree or the Court orders) for use in this or such other action against the Producing Party, provided that the proposed recipient is:

(i) already subject to the Confidentiality Order in the MDL or Philadelphia orders; or

(ii) agrees to be bound by this Order and signs the certification attached as Exhibit A;

(9) Any person involved in the treatment of plaintiff or a person identified as a fact witness in discovery for whom there is a good faith belief that there is a litigation need to disclose the information, provided that (a) any such person signs the certification attached as Exhibit A, (b) such persons reviews the Confidential Information only in counsel's office, (c) such persons shall not be provided with copies of the Confidential Information, and (d) at the

conclusion of this litigation, counsel shall disclose to the Producing Party all such persons to whom said Confidential Information was disclosed under this paragraph;

D. Persons who come into contact with Confidential Information for clerical or administrative purposes, and who do not retain copies or extracts thereof, are not required to execute Certifications.

E. Counsel shall take all reasonable and necessary steps to assure the security and non disclosure of any Confidential Information and will limit access to Confidential Information to those persons authorized by this Order.

F. To the extent information disclosed or a document used at a deposition taken in connection with this Litigation is asserted to be confidential, counsel for the Producing Party may designate as Confidential such information or document by:

(1) designating on the record during the taking of the deposition that the specific testimony or document asserted to be confidential, constitutes Confidential Information; or

(2) designating the portions of the transcript and exhibits thereto in a letter to be served on the court reporter and opposing counsel within forty-five (45) calendar days of the Producing Party's receipt of the transcript of a deposition.

(3) The Court reporter will indicate the portions of the transcript and the exhibits that have been designated as confidential under (1) or (2) above and segregate them as appropriate. Designations of transcripts will apply to audio, video, or other recordings of the testimony. The court reporter shall clearly mark any transcript and exhibits released prior to the expiration of the 45-day period as "Confidential-Subject to Further Confidentiality Review." Such transcripts and exhibits will be treated as Confidential Information until the expiration of

the 45-day period. If the Producing Party does not make a designation under (1) above or serve a designation letter within the 45-day period under section (2) above, then the entire transcript and exhibits will be deemed not to contain Confidential Information.

(4) In the event the Producing Party is not represented at a deposition at which its documents are disclosed, the party disclosing the document shall give notice to the Producing Party within 10 days after the deposition so as to permit said Producing Party to seek protection of the transcript pursuant to paragraphs (1), (2) and (3) above.

(5) Plaintiff may object to the designation of any deposition exhibit or portion of a deposition transcript as confidential by letter any time up to 10 days following the expiration of the 45-day period described in subsection (2) above. The Producing Party shall attempt to confer with counsel to resolve the issue. If counsel are unable to resolve the issue themselves, counsel for the Producing Party may seek an order from the Court designating that the deposition exhibit or pages of the deposition transcript are confidential. The exhibit or transcript pages shall remain confidential until issuance of a court order denying the Producing Party's motion. In the event the Producing Party does not seek an order designating the confidential status of the testimony or document in issue within 10 days of receiving plaintiffs' objection, the document or testimony at issue will be deemed non-confidential and de-designated as such.

G. Where indicated in this Order, each recipient of Confidential Information shall be provided with a copy of this Protective Order. Upon reading this Protective Order, such person shall sign a Certification, in the form annexed hereto as Exhibit A, acknowledging that he or she has read this Protective Order and shall abide by its terms. These certifications are strictly confidential. Counsel for each party shall maintain the certifications without giving copies to the

other side, except upon motion to the Court for good cause shown.

#### **IV. DE-DESIGNATION OF STAMPED CONFIDENTIAL DOCUMENTS**

Except as provided in paragraph III(F), if at any time a party wishes for any reason to dispute a designation of Discovery Materials as confidential hereunder, such party shall notify the Producing Party of such dispute in writing, specifying the Discovery Material in dispute and the nature of the dispute. If the parties are unable to amicably resolve the dispute, the disputing party may apply by motion to the court for a ruling as to whether the disputed Discovery Material may be treated as confidential. The Producing Party shall have the burden of proof on such motion to establish the propriety of its confidentiality status. In the event any document is determined either by agreement of the parties or by Court order to be de-designated from its confidential status the Producing Party shall produce a de-designated copy of such material. These procedures will not apply to deposition exhibits and deposition transcripts, which are addressed by the procedure described in paragraph III(F).

#### **V. SUBPOENA FOR STAMPED OR OTHER CONFIDENTIAL DOCUMENTS**

If Stamped Confidential Documents or other confidential documents are subpoenaed by any person, court, administrative or legislative body, the party to whom the subpoena is directed shall not, to the extent permitted by applicable law, provide or otherwise disclose such documents or information until ten (10) days after giving counsel for the Producing Party notice in writing of the subpoena, accompanied by a copy of the subpoena. If the Producing Party objects to the subpoena, the party to whom the subpoena is directed agrees not to produce documents in response to it until the resolution of the objection by the appropriate court. If no objection to the subpoena is raised in the time set forth herein, the subpoenaed party will thereafter comply with the subpoena.

## **VI. UNAUTHORIZED DISCLOSURE**

If a Receiving Party learns of any unauthorized disclosure of Confidential Information, the party shall immediately upon learning of such disclosure inform the Producing Party of all pertinent facts relating to such disclosure and shall make all reasonable efforts to prevent further disclosure by each unauthorized person who received such information and shall make all reasonable efforts to retrieve said Confidential Information.

## **VII. HANDLING OF CONFIDENTIAL DOCUMENTS AT CONCLUSION OF CASE**

Upon the conclusion of any attorney's last case in this proceeding (or such other case in which the Receiving Party is permitted by this order to use Confidential Information), including any appeals related thereto, at the written request and option of the Producing Party, all Confidential Information produced by the Producing Party, as well as that disseminated by the Receiving Party to others, shall be returned within thirty (30) calendar days to the Producing Party, provided, however, that counsel may retain their privileged communications, work product, certifications obtained pursuant to paragraph IIIC, and all court-filed documents even though they contain Confidential Information produced by the Producing Party, but such retained privileged communications and work product and court-filed documents shall remain subject to the terms of this Protective Order. At the written request of the Producing Party, any person or entity having custody or control of recordings, notes, memoranda, summaries or other written materials, and all copies thereof, relating to or containing Confidential Information produced by the Producing Party shall deliver to the Producing Party an affidavit certifying that reasonable efforts have been made to assure that all such Confidential Information produced by the Producing Party and any copies thereof, any and all records, notes, memoranda, summaries, or other written material regarding the discovery materials produced by the Producing Party (except



for privileged communications, work product and court-filed documents as stated above) have been delivered to the Producing Party in accordance with the terms of this Protective Order. The parties may agree to provide certifications of destruction of such Confidential Information in lieu of complying with the terms of this paragraph.

#### **VIII. FILING PAPERS THAT CONTAIN STAMPED CONFIDENTIAL DOCUMENTS**

A. The parties will use the following procedure for filing with the Court papers consisting of, relating to, containing, incorporating, reflecting, describing, or attaching Confidential Information:

(1) Any motion, the supporting documents for which contain Confidential Information, shall initially be filed with the Court without the supporting documents annexed;

(2) A courtesy copy of any such motion or other pleading, memorandum of law, certification or exhibit that contains Confidential Information shall be provided to the Producing Party and the Court in a sealed envelope, labeled with the case name, case number, the motion to which the documents relate, and a listing of the titles of the papers in the envelope (such titles not to reveal Confidential Information). Unless a motion for a protective order is filed with the Court by the Producing Party within seven (7) days of receipt seeking or maintaining the designation of some or all of said supporting documents as confidential, said supporting documents may be filed and shall be deemed non-confidential. Such supporting documents shall not be filed with the Court until the motion for protective order is resolved.

B. When submitting or filing Confidential Information pursuant to the previous paragraphs, the submitting party shall submit only those pages of the deposition transcript, document, or other matter containing Confidential Information that are cited, referred to, or specifically relied on by the submitting party. The submitting party shall not submit or file the entirety, or other

portions, of the deposition transcript, document, or other matter containing Confidential Information.

#### **IX. MODIFICATION PERMITTED**

By written agreement of the parties, or upon motion and order of the Court, the terms of this Confidentiality Order may be amended or modified. This Confidentiality Order shall continue in force until amended or superseded by express order of the Court, and shall survive any final judgment or settlement in this Action.

#### **X. INADVERTENT DISCLOSURE**

A. Any inadvertent disclosure of confidential, proprietary, or privileged material will not be construed as a waiver, in whole or in part, of (1) the Producing Party's claims of confidentiality or privilege either as to the specific information inadvertently or unintentionally disclosed or more generally as to the subject matter of the information disclosed, or (2) the party's right to designate the material as confidential pursuant to this Order. A written representation by counsel for the Producing Party that the disclosure was inadvertent shall be deemed prima facie evidence of that fact.

B. The Producing Party shall promptly notify the other party of an inadvertent disclosure following discovery of the inadvertent production, and that other party (i) shall in the case of a privileged document, return the inadvertently disclosed document forthwith, as well as any and all copies; or (ii) in the case of a confidential, proprietary document, shall mark it and all copies, "CONFIDENTIAL— SUBJECT TO CONFIDENTIALITY ORDER." In the event that the other party cannot comply with these requirements—because, for example, the inadvertently produced document has been given to a third party—the other party shall provide the Producing Party with

the name, address, and telephone number of such person(s) as well as the date of and reason for the transmission of the document.

C. Notice of inadvertent disclosure shall apply to all copies of the document inadvertently disclosed, including documents inadvertently produced in cases other than in this litigation (such that inadvertent disclosure of a confidential or privileged document in another jurisdiction, or in non-Prempro litigation, shall not constitute a waiver of privilege under this Order).

## **XI. ADVERTENT DISCLOSURE**

Production of a document reflecting that counsel received it, or that counsel signed or initialed the document reflecting his or her approval or disapproval, shall not be deemed a waiver of any the work product privilege or attorney/client privilege that attaches to the information accompanying the document or to the advice given with respect to the document.

## **XII. DISCLOSURE TO COMPETITORS**

A. Before disclosing Stamped Confidential Documents pursuant to paragraph III C(7) to any person at a deposition who is an employee of a defendant party in the In Re: NJ HRT Litigation, the party proposing to make such disclosure must halt the deposition and show said documents to the Producing Party. If the Producing Party objects to the proposed disclosure, disclosure shall not be made to the deponent until the parties have resolved the matter or the court has ruled on it. The burden shall be on the Producing Party opposing disclosure to notify the court, which will accept a short notice telephonic motion to hear the objection. In ruling, the court should determine whether the objecting party has shown good cause why the proposed disclosure should not be permitted. The Producing Party shall not disclose any information about the intended disclosure of the Producing Party's documents to the witness or to counsel for the witness.

B. Before disclosing, pursuant to paragraph III C(7), Stamped Confidential Documents produced by defendant Solvay or Berlex to any person at a deposition who is an employee of a defendant party in the In Re: NJ HRT Litigation, the party proposing to make said disclosure shall give counsel for Solvay and/or Berlex three days notice of their intent to make such disclosure. If Solvay or Berlex objects to the proposed disclosure, disclosure shall not be made to the deponent until the parties have resolved the matter or the court has ruled on it. In ruling, the court should determine whether the objecting party has shown good cause why the proposed disclosure should not be permitted. The Producing Party shall not disclose any information about the intended disclosure of the Producing Party's documents to the witness or to counsel for the witness.

C. Before disclosing, pursuant to paragraph III C(7), Stamped Confidential Documents of a Producing Party that has given notice of intent not to attend the deposition, to any person at a deposition who is an employee of a defendant party in the In Re: NJ HRT Litigation, the party proposing to make said disclosure shall give counsel for that Producing Party three days notice of their intent to make such disclosure. If the Producing Party objects to the proposed disclosure, disclosure shall not be made to the deponent until the parties have resolved the matter or the court has ruled on it. In ruling, the court should determine whether the objecting party has shown good cause why the proposed disclosure should not be permitted. The Producing Party shall not disclose any information about the intended disclosure of the Producing Party's documents to the witness or to counsel for the witness.

IT IS SO ORDERED ON THIS 26 DAY OF Aug., 2005

  
CAROL E. HIGBEE, J.S.C.

**EXHIBIT A**

In Re: HRT Litigation

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ATLANTIC COUNTY  
CASE NO. 266

CIVIL ACTION

**CERTIFICATION**

I hereby certify that I have read the Protective Order entered in the above-captioned action and that I understand the terms thereof.

I agree to be bound by the Protective Order.

I further agree to submit to the jurisdiction of this Court for purposes of enforcing the Protective Order, and I understand that the Court may impose sanctions on me for any violation of the Protective Order.

I understand that these certifications are strictly confidential, that Counsel who disclosed the documents to me shall maintain the certifications without giving copies to the other side, except pursuant to Court order.

I further understand that nothing in this Certification shall preclude me from answering questions under oath at any deposition or trial concerning my review of documents pursuant to this Protective Order.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

\_\_\_\_\_  
(Typed or Printed)